

Agency 26

Kansas Department on Aging

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Article 1.—GENERAL PROVISIONS

26-1-1. Definitions. (a) “Area agency” and “area agency on aging” mean the agency or organization within a planning and service area that has been designated by the secretary to develop, implement, and administer a plan for the delivery of a comprehensive and coordinated system of services to older persons in the planning and service area.

(b) “Area plan” means the document developed by an area agency that describes the comprehensive and coordinated system of services to be provided to older persons in a planning and service area.

(c) “Comprehensive and coordinated system of services” means a program of interrelated supportive and nutrition services designed to meet the needs of older persons in a planning and service area.

(d) “Contract” means a procurement agreement.

(e) “Contractee” means the party or parties who are under contract with the department or an area agency to provide services to older persons in a planning and service area.

(f) “Contribution” means a donation of money or vision card units that is given by a customer to

pay to the provider a portion or the total cost of services received.

(g) “Cost sharing or matching” means the value of third-party in-kind or cash contributions and the portion of the costs of a federally assisted or state-assisted project or program not borne by the federal or state government.

(h) “Department” means the Kansas department on aging, created by K.S.A. 75-5903, and amendments thereto.

(i) “Federal act” means the older Americans act of 1965, as amended in 2000.

(j) “Final financial report” means a contractee-prepared or grantee-prepared document that contains an accurate and complete disclosure of the financial results of the contract, grant, subcontract, or subgrant.

(k) “Grant” means an award of financial assistance in the form of money, or property in lieu of money, by the department.

(l) “Grantee” means any legal entity to which a grant is awarded and that is accountable to the department for the use of the grant. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant.

(m) “Granting agency” means the Kansas department on aging.

(n) "Greatest economic need" means the need for services resulting from an annual income level at or below the poverty threshold established annually by the federal office of health and human services.

(o) "Greatest social need" means the need for services caused by noneconomic factors that restricts an individual's ability to perform normal daily tasks or that threaten the capacity to live independently. Noneconomic factors shall include physical and mental disabilities, language barriers, and cultural or social isolation including that caused by racial or ethnic status.

(p) "Indian tribal organization" means the recognized governing body of any Indian tribe, or any legally established organization of Indians that is controlled, sanctioned, or chartered by the governing body of an Indian tribe.

(q) "In-home meal provider" means any legal entity to which funds are paid for the purpose of providing home-delivered meals under the in-home nutrition programs.

(r) "In-home service" means the provision of health, medical, or social services to a private individual in the individual's noninstitutional place of residence.

(s) "Kansan" means any person who currently resides within the state of Kansas.

(t) "Metropolitan area" means a standard metropolitan statistical area as defined by the census bureau.

(u) "Modification of a grant or contract" means a change in an area plan or other grants or contracts that would result in any of the following:

(1) Alteration of the program scope, planned objectives, or manner in which services are delivered;

(2) provision of financial assistance or payments to any entity not authorized by the original grant or contract; or

(3) alteration of the approved budget of the original grant or contract.

(v) "Monthly gross income" means the monthly sum of income received by an individual or couple from the following sources:

(1) Wages or salary;

(2) income from self-employment;

(3) social security;

(4) dividends, interest, income from estate or trusts, rental income, or royalties;

(5) public assistance or welfare payment;

(6) pensions and annuities;

(7) unemployment compensation;

(8) workers compensation;

(9) alimony;

(10) veteran's pensions; and

(11) adjusted net farm income.

(w) "Notification of grant award" and "NGA" mean the document, issued by the department, awarding financial assistance for the provision of services to older persons and specifying the terms of the grant.

(x) "Obligation" means the number of orders placed, contracts and subgrants awarded, services received, and similar transactions during the grant period that will require payment within 75 days following the last day in which the grant is active.

(y) "Older person" means any person 60 years of age or older.

(z) "Planning and service area" and "PSA" mean a geographic area of the state designated by the department for the purpose of planning, development, delivery, and overall administration of services under an area plan.

(aa) "Program income" and "project income" mean gross income received by the grantee or subgrantee and directly generated by a grant-supported activity, or earned only as a result of the grant agreement during the period.

(bb) "Purchase of service contract or grant" means an award of financial assistance in which the payment is made on a reimbursement basis at a unit rate of cost of service with an upper limit on the total cost of the grant. Payment shall be made in the form of money, or property in lieu of money.

(cc) "Redesignation" means a change in the geographic boundaries of a planning and service area or selection of an area agency that is different from the area agency previously designated for a particular planning and service area.

(dd) "Request for proposal" and "RFP" mean the document containing criteria that is used to solicit applications for a contract or subgrant from potential service providers.

(ee) "Secretary" means the secretary of the Kansas department on aging.

(ff) "Self-employment" means work for income performed by a person engaged on that person's own account in a business, farm, or other enterprise.

(gg) "Service provider" means any legal entity that is obligated to provide services to older persons in any planning and service area.

(hh) "State act" means the Kansas act on aging,

K.S.A. 75-5901 through K.S.A. 75-5925, and amendments thereto.

(ii) "State advisory council" means the advisory council on aging created by K.S.A. 75-5911, and amendments thereto.

(jj) "State plan" means the document submitted by the department in order to receive its allotment of funds under the older Americans act.

(kk) "Subgrant" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to a subgrantee.

(ll) "Subgrantee" means any legal entity to which a subgrant is awarded and that is accountable to the grantee for the use of the grant funds.

(mm) "Unit of local government" means either of the following:

(1) Any county, city, township, school district, or other similar political subdivision of the state, or any agency, bureau, office, or department thereof; or

(2) any Indian tribal organization.

(nn) "Unused supplies" means supplies that still have a useful life and that have not been put to use in the project or program for which they were acquired when the grant, contract, or subgrant under which they were acquired expires or is terminated. (Authorized by and implementing K.S.A. 2001 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; amended May 31, 2002.)

26-1-2. Procedure for redesignation of planning and service area boundaries. (a) Requests for redesignation of existing planning and service area boundaries shall be in writing and may be made by any of the following applicants:

(1) Any unit of local government;

(2) any Indian tribal organization;

(3) any region within the state recognized for area-wide planning; or

(4) any metropolitan area.

(b) At a minimum, the following factors shall be considered in decisions regarding redesignation of planning and service areas:

(1) The proposed boundaries' conformity with requirements of the state and federal acts;

(2) the geographical distribution of persons age 60 and over;

(3) the relationship of the proposed boundaries to those of other planning and service areas;

(4) the incidence of need for services and the degree to which resources are available to meet the needs;

(5) comments by older citizens, units of local government, and other interested parties in the planning and service area; and

(6) comments of the state advisory council.

(c) A public hearing on the proposed planning and service area redesignation shall be held before taking action on the request. At least one hearing shall be held in the locality of the state where redesignation will alter or modify the existing geographic boundaries.

(d) Applications shall be processed in the following manner:

(1) Within 60 calendar days following the receipt by the department of a request for redesignation, a public hearing shall be held in the geographic area that will be affected by the proposed redesignation.

(2) Advance notice of the hearing shall be given at least 15 calendar days before the date of the hearing by publishing the notice in a newspaper with general circulation in the geographic area that will be affected by the proposed redesignation. The notice shall state the date, time, location, and purpose of the public hearing.

(3) Written comments shall be received on or before the 10th calendar day following the hearing.

(4) The secretary shall render a decision on each request within 60 calendar days after the close of the comment period.

(5) The applicant shall have 30 calendar days following the receipt of the decision to appeal the secretary's decision.

(e) The applicant may withdraw or ask for a continuance of its redesignation request at any time before receiving the secretary's decision. The request shall be made in writing to the secretary. Only one request for continuance shall be allowed for each redesignation request, and, if granted, the continuance shall not exceed 90 calendar days from the date it is requested. (Authorized by and implementing K.S.A. 1998 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended May 1, 1987; amended March 5, 1999.)

26-1-3. Procedure for redesignation of

area agency on aging. (a) Only one area agency on aging shall be designated in each planning and service area.

(b) A request for redesignation of an area agency on aging may be submitted by any of the following:

- (1) Any unit of local government;
- (2) any established office on aging operating in a planning and service area;
- (3) any private or public nonprofit agency; or
- (4) any Indian tribal organization.

(c) An area agency on aging shall not be redesignated until:

(1) An on-site review has been completed to determine the capacity of the applicant to conform with the federal and state acts and rules and regulations promulgated pursuant to those acts;

(2) At least one public hearing has been conducted in the planning and service area;

(3) Evidence of support has been provided from:

- (A) Units of local government;
 - (B) older persons;
 - (C) the state advisory council;
 - (D) local advisory councils; and
 - (E) other interested parties; and
- (4) Evidence has been supplied that the applicant possesses the legal and organizational capacity to carry out the functions specified in the federal and state acts.

(d) Applications shall be processed as follows:

(1) Within 60 calendar days following the receipt by the department of a request for redesignation, a public hearing shall be held in the geographic area which will be affected by the proposed redesignation.

(2) Advance notice of the hearing shall be given at least 10 calendar days prior to the date of the hearing by publishing the notice in a newspaper which has general circulation in the geographic area which will be affected by the proposed redesignation. The notice shall state the date, time, location, and purpose of the public hearing.

(3) Written comments shall be received before, at, and up to 10 calendar days following the hearing.

(4) The secretary shall render a decision to the applicant within 60 calendar days after the close of the comment period.

(5) The applicant shall have 30 calendar days following the receipt of the secretary's decision to appeal the decision.

(e) The party requesting a redesignation of an

area agency may withdraw or ask for a continuance of its redesignation request at any time prior to receiving the secretary's decision. The request shall be in writing. Only one request for continuance shall be allowed each redesignation request and, if granted, the continuance shall not exceed 90 calendar days from the date it is requested. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986.)

26-1-4. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-34, Oct. 23, 1985; amended May 1, 1986; amended May 21, 1999; revoked May 31, 2002.)

26-1-5. Area plan development. (a) Each area agency shall develop and submit an area plan for approval by the department. An area agency shall not receive any funds until the area plan has been approved by the department.

(b) Each area plan shall be submitted on forms prescribed by the secretary and shall contain all of the assurances required in section 306 of the older Americans act of 1965, as amended in 2000, and all information requested on the forms.

(c) Each area agency shall ensure that units of local government, local advisory councils, potential service providers, and older persons have an opportunity for involvement in the development of the area plan.

(d) Each area agency, as part of the area plan, shall describe the rationale for the proposed allocation of funds for services in the planning and service area. The rationale shall identify the manner in which the proposed distribution of funds will meet identified, priority nutrition, and supportive service needs.

(e) The area plan developed by the area agency shall provide assurances that the area agency will spend in each fiscal year, for services to older individuals residing in rural areas in the area agency's planning and service area, an amount not less than the amount expended for these services in the previous federal fiscal year, which shall include amounts expended under Title V and Title VII of the older Americans act of 1965. (Authorized by and implementing K.S.A. 2001 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended, T-89-14, April

26, 1988; amended Oct. 1, 1988; amended May 31, 2002.)

26-1-6. Operating policies and procedures of area agencies. (a) Each area agency receiving funding under an area plan shall have written policies and procedures to govern the conduct of its operations and functions. These policies and procedures shall meet the following criteria:

(1) Describe the administrative and policy structure of the area agency; and

(2) describe the policies and procedures that are applicable to recipients of funds from the department, and include any policies and procedures mandated by the department.

(b) Each area agency's written policies and procedures that are applicable to recipients of funds from the department shall be officially adopted by action of the entity's governing body. Before adoption, the area agency shall provide an opportunity for comment on the proposed operating policies and procedures by units of local government, local advisory councils, potential service providers, and older persons. Notice of the opportunity for comment shall be published in a newspaper or newspapers of general circulation within the planning and service area at least 14 days before the policies and procedures are adopted by the area agency.

(c) Each area agency shall submit the procedures to the department for review before final adoption of the agency's policies and procedures.

(d) Each area agency shall provide without cost copies of the written policies and procedures to each recipient of funds from the department with whom it has a sub-grant or contract and to the department. Other parties may obtain a copy of the written policies and procedures upon compliance with the Kansas open records act, K.S.A. 45-215 through 45-223, and amendments thereto. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended May 21, 1999.)

26-1-7. Confidentiality; procedures to protect information; sanctions. (a)(1) To protect the confidentiality of information about individuals collected in the delivery of services and to safeguard against the unauthorized disclosure of that information, each of the following parties providing services or receiving services through any of the programs in paragraph (a)(2) shall es-

tablish and maintain procedures that shall be publicized and shall identify what sanctions shall be imposed against anyone who discloses information in violation of the procedures:

- (A) nutrition program certified assessor;
- (B) client assessment, referral, and evaluation (CARE) assessor;
- (C) senior case manager or case manager;
- (D) service provider;
- (E) area agency;
- (F) contractor, subcontractor, grantee, or subgrantee of an area agency;
- (G) contractor, grantee, or subgrantee of the department;
- (H) legal assistance provider;
- (I) state medicaid fiscal agent; and
- (J) contractor of a state medicaid fiscal agent.

(2) The provisions of paragraph (a)(1) shall apply to the following programs:

- (A) the medicaid nursing facility services payment;
- (B) the medicaid home- and community-based services waiver for the frail elderly;
- (C) the medicaid targeted case management;
- (D) the CARE program;
- (E) the income-eligible home care services;
- (F) the older Americans act;
- (G) the senior care act;
- (H) the in-home nutrition program;
- (I) the state funded case management, custom care, and environmental modification programs; and
- (J) any other program administered by the secretary.

(b) No person or organization identified in subsection (a) above shall disclose, or permit any director, trustee, officer, employee, agent, volunteer, contractor, or subcontractor to disclose, any information about an individual that identifies any of the following:

- (1) name, address, or telephone number;
- (2) past or present receipt of any state or local agency, or federal program services;
- (3) family, social, or economic circumstances;
- (4) medical data, including diagnoses and past history of disease or disability;
- (5) income and other financial information;
- (6) department evaluation of personal or medical information;
- (7) program eligibility; or
- (8) third-party liability for payment for program services to any person or entity without the prior informed consent of the individual or of the

individual's representative, unless the disclosure meets any of these criteria:

- (A) is required by court order;
- (B) is required to enable the delivery of services for which the individual or the individual's representative has requested or applied; or
- (C) is required for program monitoring purposes by authorized federal, state, or local agencies.

(c) If, after an investigation, notice, and the opportunity for a hearing, the secretary finds that any person or organization identified in subsection (a) or (b) above has disclosed or permitted the disclosure of any information the disclosure of which is prohibited by this regulation or by any other state or federal law restricting or prohibiting the disclosure of information about individuals requesting or receiving services through any of the department's programs, the person or organization shall have imposed against that person or organization those sanctions that the secretary decides are commensurate with the disclosure under all the circumstances. Sanctions may include any of the following:

- (1) denial, termination, or suspension of performance of any grant, subgrant, contract, sub-contract, or other agreement;
- (2) denial, termination, or suspension of participation in any or all department programs;
- (3) referral for criminal prosecution or civil penalty assessments when provided for by law;
- (4) petitioning for temporary or permanent injunctive relief without prior notice;
- (5) exclusion from department data bases; or
- (6) any other sanctions permitted by any state or federal law.

(d) No attorney paid through any program administered by the department to provide legal assistance to an individual shall be required by the department or the area agency to disclose the identity of any individual to whom the attorney provides or has provided legal services or any information protected by the attorney-client privilege. (Authorized by and implementing K.S.A. 75-5908 and K.S.A. 1996 Supp. 75-5945; effective, T-89-14, April 26, 1988; effective Oct. 1, 1988; amended Nov. 14, 1997.)

26-1-9. Withdrawal of area agency on aging designation. (a) An area agency's designation shall be withdrawn by the secretary after reasonable notice and opportunity for a hearing, for any of the following reasons:

(1) An area agency does not meet federal, state, or local requirements.

(2) An area plan or plan amendment is not approved.

(3) There is substantial failure in the provisions, implementation, or administration of an approved area plan to comply with any provision of the older Americans act or the policies and procedures established or published by the department.

(4) The area agency voluntarily withdraws as the designated area agency on aging, which shall be effective only with the express written consent of the secretary.

(5) The area agency expends the resources allocated by the department in violation of the federal older Americans act or the policies and procedures established or published by the department.

(6) The area agency does not obtain approval by the department for a revision of its area plan before implementing a change, as required by K.A.R. 26-2-4.

(7) The area agency fails to meet all conditions of a notification of grant award issued by the department by the deadline established by the department.

(8) There is a change in administration that erodes the authority or capacity of the area agency to perform the functions required by law and regulations.

(9) The area agency is insolvent or fails to meet any of its financial obligations, including payroll, rent, utilities, or payment of subgrantees or sub-contractors, for a period of at least 90 consecutive days.

(10) The area agency commits fraudulent, unethical, or unprofessional conduct.

(b) The governing board or administrative unit of the area agency shall have 30 days to respond to the department's written notification of withdrawal by submitting for department approval a plan of corrective action that shall describe the following:

(1) The action steps to be taken to regain area agency designation;

(2) the expected outcome for each action step; and

(3) the maximum time frame needed to correct the deficiencies.

(c) If the department withdraws an area agency's designation under subsection (a) of this

regulation, the following shall be undertaken by the department:

(1) Provision of a plan for the continuity of area agency functions and services in the affected planning and service area; and

(2) designation of a new area agency in the planning and service area in a timely manner.

(d) If necessary to ensure continuity of services in a planning and service area, either of the following actions may be undertaken by the department, for a period of up to 180 days after its final decision to withdraw designation of an area agency:

(1) Performance of the responsibilities of the area agency; or

(2) assignment of the responsibilities of the area agency to another agency in the planning and service area. (Authorized by and implementing K.S.A. 1998 Supp. 75-5908; effective March 5, 1999.)

Article 2.—GRANTS AND CONTRACTS

26-2-1. Notification of grant award (NGA) or contract. (a) Each grantee or contractee of the department shall sign and return to the department a notification of grant award or contract before funds will be advanced. The notification of grant award or contract shall include:

(1) the total financial amount of the grant award or contract, including;

(A) the amount of funds to be provided by the department;

(B) the amount of funds to be provided by the grantee or contractee; and

(2) the effective and expiration dates of the grant or contract;

(3) assurance that all materials published in connection with the grantees, contractees, and subcontractees activities shall conspicuously acknowledge the support of the administration on aging and the department;

(4) special conditions which may be specified as part of the grant or contract;

(5) the signature of the authorized representative of the grantee or contractee and the secretary; and

(6) the statement that the grant award or contract is made subject to the Kansas Administrative Regulations and the department's policy issuances which become effective after the date of the initial grant award for the grant period.

(b) Unless revised, computation of grant

amounts which appear on the document shall constitute a ceiling for state and federal participation in the approved cost.

(c) Unless specifically exempted by the secretary, providers of services funded in whole or in part by state funds shall comply with the financial requirements applicable to providers of services funded by federal act funds. When an exemption is given, appropriate financial requirements shall be imposed concerning the use of these funds. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-34, Oct. 23, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988.)

26-2-2. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; revoked, T-86-34, Oct. 23, 1985; revoked May 1, 1986.)

26-2-3. Reporting and unearned funds requirements. (a) General reporting requirements.

(1) Each grantee and contractee of the department shall submit program and financial reports to comply with federal and state program requirements. Each grantee and each contractee shall be responsible for the following:

(A) Gathering accurate information necessary to complete its reports;

(B) completing reports on forms or in a format prescribed by the secretary, including entering data in the management information system; and

(C) submitting reports or data to the secretary or designee on or before the due dates.

(2) Each grantee and each contractee shall be solely responsible for obtaining and reporting necessary information from subgrantees, contractors, and subcontractors with whom the grantee or contractee has subgrants, contracts, or subcontracts.

(3) A waiver of deadline for submitting a report shall not be granted unless a state or federal statute, a regulation other than this regulation, or other authority applicable to the program for which the report is required specifically authorizes the secretary to waive the reporting deadline. A waiver shall be granted only if the grantee or contractee meets the following requirements:

(A) Submits a written waiver request that is received by the secretary at least eight business days before the due date for the report for which the waiver is being requested;

(B) identifies in the written waiver request the statute, the regulation other than this regulation, or other authority pertaining to the program for which the report is required that specifically authorizes the secretary to waive a reporting deadline; and

(C) certifies and documents that all conditions or prerequisites for the waiver contained in the statute, regulation, or other authority have been met.

(4) Within five business days after receipt of the written waiver request, a written notice of denial or approval of the request shall be issued by the secretary. The deadline for submitting a program or financial report shall not be deemed changed merely because the grantee or contractee submitted a written waiver request for an extension of the report's due date.

(5) Failure to submit complete and accurate program or financial reports by the due dates, even if a waiver is granted, may be remedied by departmental action, including one or more of the following:

(A) Termination or suspension of the grant or contract;

(B) termination or suspension of grant or contract payments;

(C) withholding of all administrative funds;

(D) reducing a percentage of administrative funds;

(E) exclusion from consideration for future grants or contracts; and

(F) exclusion from participation in the redistribution of the older Americans act carryover or unearned funds, as specified in the state plan on aging.

(b) Final financial report requirements for older Americans act (OAA) title III.

(1) Before submitting the final financial report, the area agency shall liquidate all obligations for all goods and services for the report period.

(2) The area agency shall submit a consolidated final financial report for each program component and shall include a report for each subgrantee, contractor, and subcontractor that supports the area agency's final financial report.

(3) An accurate final financial report shall be due at the department on or before December 15 after the end of the grant period, which ends on September 30.

(4) An area agency may submit a revised final financial report if the report is accompanied by the supporting final financial report for each of

the area agency's OAA title III subgrantees, contractors, and subcontractors and if either of the following conditions is met:

(A) The revised report is received either on or before December 31 after the end of the grant period.

(B) The revised report is received after December 31 following the end of the grant period, but on or before April 15, and the report is delivered simultaneously with the audit report performed in accordance with K.A.R. 26-2-9 confirming that the revised report is an accurate report.

(c) Older Americans act unearned funds requirements.

(1) Unearned funds shall be those funds that have been awarded to a grantee or contractor either that have not been expended by the grantee or contractor or that have been expended for an unallowable cost due to the grantee's or contractor's failure to comply with specific policies, regulations, or grant or contract conditions governing the award or contract.

(2) Each area agency's unearned funds calculation shall be based on the area agency's final or revised financial report submitted on or before December 31. The area agency shall be notified by the department of the amount of unearned funds by issuance of a revised notification of grant awards.

(3) Unearned older Americans act funds that have been calculated and issued shall be adjusted only if the revised final financial report accompanied by an audit report is received by the department before April 15 and if the revised calculated unearned funds increased by .5% or more. If an area agency has an increase in older Americans act unearned funds of .5% or more, the area agency shall perform one of the following adjustments:

(A) Submit a check payable to the Kansas department on aging for the amount of the increased unearned funds;

(B) submit a written request to the department for a reduction in its allocation for the next grant year in an amount equal to the amount of the increased unearned funds; or

(C) make arrangements approved by the secretary in writing to pay the increased unearned funds to the department in two or more installments.

(d) Final report requirements for all programs except older Americans act title III programs.

(1) Each recipient of state or federal funds for aging program grants or contracts not identified in subsection (b) shall annually submit an accurate and complete final financial report in the format prescribed by the secretary for each program for which the recipient has received funds.

(2) The complete final financial report shall be received by the department no later than the deadline stated in the notification of grant award or contract.

(3) If a recipient's unearned funds increase, the recipient shall perform one of the following adjustments:

(A) Submit a check payable to the department for the amount of the unearned funds; or

(B) make arrangements approved by the secretary in writing to pay the unearned funds to the department in two or more installments. (Authorized by and implementing K.S.A. 2002 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; amended Aug. 1, 2003.)

26-2-4. Revision of approved area plans, grants, or contracts. (a) The area agency may submit a written request for revision of an area plan, grant, or contract to the secretary for approval.

(b) A revision of an approved area plan, grant, or contract may be approved by the secretary, if the secretary determines that the revision is consistent with the state plan, program priorities, or mandates and will not adversely affect the provision of services to older persons.

(c) The area agency shall submit a request for revision of an area plan, grant, or contract to the secretary before the final 60 days during which the plan, grant, or contract is in effect. (Authorized by and implementing K.S.A. 2001 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended Jan. 7, 2000; amended May 31, 2002.)

26-2-5. Assessments of performance and compliance with department grants and contracts. (a) Each grantee or contractee shall submit to an annual on-site assessment to:

(1) Determine the extent of compliance with state and federal requirements; and

(2) assess the degree to which objectives which

are part of the grant or contract have been achieved.

(b) A written report of the on-site assessment shall be provided to the grantee or contractee describing the findings of the on-site assessment, and listing any corrective actions deemed necessary and the deadline for taking such action.

(c) Each grantee or contractee shall respond to the department to any exceptions noted by the department within 30 days from receipt of the written assessment report.

(d) If corrective actions listed within the assessment report are not taken:

(1) The corrective action deadline may be extended by the department;

(2) the current grant may be suspended or terminated by the department; or

(3) subsequent grant applications may be denied by the department.

(e) Each grantee shall assess its subgrantees annually. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-34, Oct. 23, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988.)

26-2-6. Basis for withholding of payments. (a) Payments to a grantee or contractee shall be withheld by the department if:

(1) Expenditures by the grantee or contractee fail to comply with applicable federal or state requirements; or

(2) The secretary suspends or terminates the grant or contract.

(b) Payments may be withheld by the department if a grantee or contractee fails to submit any document required by the department on or before the established due date.

(c) Payments that are withheld shall be released within 30 days after the requirements are met by the grantee or contractee. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended May 1, 1986; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988.)

26-2-7. Closeout, suspension, or termination of a grant, subgrant, contract, or subcontract. (a) The department and each recipient of department funds may close out, suspend, or terminate a grant, subgrant, contract, or subcontract in accordance with the provisions of 45 C.F.R. 74.61, 74.62 and 74.71, as in effect on Oc-

tober 1, 1998, which are adopted by reference, with the following exceptions:

(1) Each reference in the federal regulations to “HHS” shall be deemed to refer to the department when the department is a party in an action with the grantee or contractor and refers to the grantee when the grantee or contractor is a party in an action with the subgrantee.

(2) Each reference in the federal regulations to “the Federal Government” shall be deemed to refer to the department or grantee of the department.

(3) Each reference in the federal regulations to “Federal” shall be deemed to refer to “state.”

(b) 45 C.F.R. Part 76, as in effect on October 1, 1998, is adopted by reference, and any amounts due the federal government shall constitute a debt or debts owed by the grantee to the federal government and shall, if not paid upon demand, be recovered from the grantee or its successor or assignees by setoff or other action as provided by law. (Authorized by and implementing K.S.A. 1998 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended Jan. 7, 2000.)

26-2-8. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 15, 1985; effective May 1, 1986; revoked May 1, 1987.)

26-2-9. Audits. (a) Definitions.

(1) “Monitoring” means an activity performed by department staff, which shall be at the discretion of the secretary and shall include one or more of the following:

(A) Reviewing reports submitted by the entity;

(B) performing site visits to the entity to review financial and programmatic records and observe operations;

(C) arranging for agreed-upon procedures for certain aspects of the entity’s activities, including eligibility determinations; or

(D) reviewing the entity’s single audit results or program-specific audit results.

(2) “Limited-scope audit” means agreed-upon procedures conducted in accordance with the American institute of certified public accountants’ generally accepted auditing standards and attestation standards that address only one or more of the following types of compliance requirements:

(A) Activities allowed or not allowed;

(B) allowable costs and cost principles;

(C) eligibility;

(D) matching, level of effort, earmarking; and
(E) reporting.

(3) “Pass-through entity” means a non-state entity that provides a state award to a subrecipient to carry out a state program.

(4) “Recipient” means an entity that expends state awards received directly from a state awarding agency to carry out a state program.

(5) “State award” means state financial assistance and state cost-reimbursement contracts that entities received directly from the department or indirectly from pass-through entities. This term shall not include procurement contracts, under grants or contracts, used to buy goods or services from vendors. Audits of these vendors shall be covered by the terms and conditions of the contract.

(6) “Subrecipient” means a non-state entity that expends state awards received from a pass-through entity to carry out a state program. However, this term shall not include an individual that is a beneficiary of such a program. This entity may also be a recipient of other state awards directly from a state awarding agency. An entity shall be deemed to be a subrecipient if the entity meets all of the following conditions:

(A) Determines who is eligible to receive state financial assistance and determines the amount of this assistance;

(B) has its performance measured against whether the objectives of the state program are met;

(C) has responsibility for programmatic decision making;

(D) has responsibility for adherence to applicable state program compliance requirements; and

(E) uses the state funds to carry out a program of the entity, rather than provide goods or services for a program of the pass-through entity.

(7) “Vendor” means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a state program. These goods or services may be for the entity’s own use or for the use of beneficiaries of the state program. An entity shall be deemed to be a vendor if the entity meets all of the following conditions:

(A) Provides the goods and services within normal business operations;

(B) provides similar goods or services to many different purchasers;

(C) operates in a competitive environment;

(D) provides goods or services that are ancillary to the operation of the state program; and

(E) is not subject to compliance requirements of the state program.

(b) Audit requirements.

(1) Office of management and budget circular no. A-133, "audits of states, local governments, and non-profit organizations," dated June 24, 1997, is hereby adopted by reference and referred to as OMB circular A-133.

(2) Each area agency on aging that is required to have a single audit in accordance with OMB circular A-133 shall include in the audit all state awards and payments from a Medicaid source.

(3) Each recipient, subrecipient, or pass-through entity that expends \$300,000 or more per year in one or more state awards shall have an audit conducted in accordance with government auditing standards and OMB circular A-133.

(4) Each recipient, subrecipient, or pass-through entity that expends less than \$300,000 per year in one or more state awards shall have either of the following as reflected in its agreement with the department:

(A) A limited-scope audit in accordance with the provisions of OMB circular A-133 compliance supplement; or

(B) monitoring performed by the department, which shall be based upon a risk assessment of the entity.

(5) At the discretion of the secretary, a recipient, subrecipient, pass-through entity, or vendor who receives funds directly from the department or from a pass-through entity and who is not subject to the audit requirements in paragraph (b)(4)(A) may be subject to an audit. This audit shall be completed at the department's expense.

(6) Each audit shall be conducted by an independent auditor.

(7) Each audit report shall be submitted to the department within six months after the end of the entity's fiscal year.

(8) Each audit report submitted to the secretary after the audit report's deadline shall be considered late unless the audited entity has received written authorization from the secretary granting an extension of the deadline. A written request for an extension shall be considered by the secretary only if the request includes a statement signed by the entity's chair of the board of directors that identifies circumstances necessitating an extension.

(9) The determination of penalties for failing

to submit audit reports or submitting incomplete or late audit reports shall be made by the secretary. (Authorized by and implementing K.S.A. 2002 Supp. 75-5908; effective, T-89-14, April 26, 1988; effective Oct. 1, 1988; amended Jan. 7, 2000; amended Aug. 1, 2003.)

Article 3.—PROCUREMENT

26-3-1. Contracting and granting practices and requirements. (a) No department grantee or contractor shall make a subgrant or contract involving funds made available by the department until an area plan or other document detailing the proposed use or uses of the funds has been approved by the department for a specific time period and the secretary has issued a notification of grant award or contract to the grantee or contractor.

(b) In making a subgrant or contract, each department grantee or contractor shall use the funds awarded under a department-approved area plan for those services that are consistent with service definitions issued and provided by the department and the identified, priority service needs within the PSA.

(c) Any entity that receives funding through a program, except the medicaid program, administered by the secretary shall be selected on a competitive basis, unless a noncompetitive selection basis is permitted by some other provision of law. For purposes of this subsection (c), "entity" shall include any department grantee or contractor, a subgrantee or subcontractor of a department grantee or contractor, and any entity providing services under any arrangement with a subgrantee or subcontractor.

(d) Provider selection standards. The service provider selection process for grants, contracts, subgrants, and subcontracts required by subsection (c) above shall meet the following requirements:

(1) For services provided under a state-funded program, the provider selection process used shall encourage free and open competition among qualified, responsible providers by, at a minimum, meeting the following requirements:

(A) Providing potential providers with a notice of service needs describing the required services, the service standards, the minimum vendor qualifications, and the process for submitting a bid or an offer to provide the services; and

(B) identifying and avoiding both potential and actual conflicts of interest.

(2) For services provided under a federally funded program, the provider selection process shall satisfy the competition and procurement standards and procedures required by the federal law applicable to the federal program.

(3) For services provided under a program that is funded with federal and state funds, the provider selection process shall satisfy the competition and procurement standards and procedures required by the federal law applicable to the program.

(e) Older Americans act service contracts. When the department makes a contract with or a grant to an area agency under the older Americans act to provide services to older persons within a PSA, the following provisions shall apply:

(1) The area agency may enter into a contract with a unit of local government or with a non-profit organization to provide services without the prior, written approval of the secretary. For purposes of this section, a "non-profit" organization is an organization that has received a determination letter from the internal revenue service that qualifies it for tax-exempt status under the internal revenue code.

(2) The area agency shall not enter into a contract with an individual or a for-profit organization to provide services until the area agency has requested and received written approval from the secretary to enter into the contract. Requests for contract approvals shall be approved if accompanied by a notarized statement from the area agency's executive director that the contract was procured according to competition and procurement standards and procedures required by the older Americans act and does not involve a conflict of interest. Within 30 days after the date on which the request was received, the area agency shall be notified by the department if the request is approved or disapproved.

(3) An area agency whose older Americans act for-profit service provider terminates the service contract before the end of the contract's term for any reason may enter into a replacement contract with a different for-profit provider for the same services without using the area agency's normal competitive process and without requesting the prior approval of the secretary required by this regulation, if the area agency, within 30 days after the effective date of the replacement contract,

sends the secretary a written notice describing the following:

(A) The circumstances of the contract termination;

(B) the efforts made to obtain replacement services; and

(C) an assurance that the replacement contract does not involve a conflict of interest.

(f) Each area agency shall retain its grants, subgrants, contracts, and subcontracts with service providers in retrievable form for at least six years after the date on which the subgrant, contract, or subcontract ended. Upon request made during the six-year retention period, an area agency shall make its grants, contracts, and subcontracts available for review by representatives of the department or its auditors, the division of legislative post audit, or the United States department of health and human services. (Authorized by and implementing K.S.A. 1998 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; amended Jan. 7, 2000.)

26-3-2. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; revoked May 31, 2002.)

26-3-3. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-34, Oct. 23, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; revoked Jan. 7, 2000.)

26-3-4. Responsibilities when subgranting or contracting services under an area plan. When subgranting or contracting for services under an area plan, each area agency shall meet these requirements:

(a) Subgrant or contract for services within 90 days after the effective date of the notification of grant award issued by the department, unless written approval for an extension of time is both requested of and granted by the secretary;

(b) not alter the subgrant or contract during the final 60 days of any grant period, unless prior written approval to do so is requested of and granted by the secretary;

(c) obtain written approval from the department when proposing to contract or subgrant for services with any for-profit organization; and

(d) retain pertinent records for each subgrant or contract in the area agency office for review and audit purposes for a period of three calendar years from the end of the calendar year or from the date of the final financial report, whichever is later. If any litigation or audit is begun or if a claim is instituted involving a subgrant or contract, the records pertaining to such subgrant or contract shall be retained until such litigation, audit, or claim is settled. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended May 1, 1986; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; amended Nov. 14, 1997.)

26-3-5. Revision of approved subgrants or contracts. (a) A subgrantee, contractor or subcontractor shall submit to an area agency a written request for revision of a subgrant or contract.

(b) Any area agency may agree to a revision of a subgrant or a contract with a non-profit public or private organization, if the area agency determines that the revision is consistent with state and area plans and will not adversely affect the provision of services to older persons in the PSA.

(c) Each area agency, before agreeing to a revision of a contract with a for-profit organization, shall submit the revision to the department for its approval. The request shall include a statement that the area agency has determined that the proposed revision is consistent with the state and area plans and will not adversely affect the provision of services to older persons in the PSA. (Authorized by and implementing K.S.A. 1998 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended May 1, 1986; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; amended Jan. 7, 2000.)

26-3-6. Reporting requirements. Each sub-grantee or contractee of an area agency shall:

(a) Submit program and financial reports to the area agency deemed necessary by the department to comply with federal and state requirements; and

(b) submit such reports by the due dates, using the forms prescribed by the secretary. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988.)

26-3-7. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984;

effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; revoked Nov. 14, 1997.)

Article 4.—NON-MEDICAID HEARING AND APPEALS

26-4-1. Notice of actions; appeals by written requests; time to file written requests. (a) When the action is taken or proposed by any of the following parties in any program administered by the secretary, other than a medicaid program administered pursuant to K.S.A. 1996 Supp. 39-968, 75-5321a, and 75-5945 et seq. and any amendments, the procedures in this article 4 shall apply:

(1) by the secretary or the secretary's designee when it affects any area agency on aging, a service provider, a customer, or any applicant to become a service provider or customer;

(2) by the secretary or the secretary's designee, an area agency, or any of their agents when it affects a service provider, a customer, or an applicant to become a service provider or customer; or

(3) by a service provider or its agent when it affects a customer or an applicant to become a customer.

(b)(1) If the secretary or other authority described above in subsection (a) proposes to take any of the actions specified in subsection (a) of this regulation, that authority shall mail written notice of the proposed action and the basis for the proposed action to the affected party or parties at least 10 days before to the effective date of the action identified in the written notice, unless a longer notice period is specifically required by some other provisions of law.

(2) In situations involving an immediate danger to the public health, safety, or welfare, action may be taken by the secretary or other authority without giving prior written notice of proposed action described in this subsection. When action is taken without prior written notice of proposed action prescribed above, written notice of the action shall be mailed by the secretary or other authority to the affected party or parties as soon as practical.

(c) Unless prohibited by some other provision of law, the proposed action may be taken, without any additional notice to the affected party, on the effective date described in the written notice.

(d) Each written notice of proposed action shall identify the reasons for and effective date of the proposed action and include a statement in-

forming the affected party of the right to appeal the action by filing a written request for a hearing with the department on aging within time limits described below in subsection (e).

(e) A party receiving notice of proposed action may appeal the action by filing a written request for a hearing with the department on aging, on or before the date that is 30 days after the effective date of the proposed action identified in the written notice. If no written notice of proposed action is given, an affected party may appeal the action by filing a written request for a hearing with the department on aging on a date that is either within 30 days after the date on which the affected party knew or reasonably should have known of the action or within 30 days after the date on which the affected party received written notice of the action from any source.

(f)(1) A written request for hearing shall be deemed filed with the department on the date it is delivered to the department or on the date of the postmark on the envelope bearing the written request. Written requests that are misdirected to the area agency on aging, a service provider, or the department of social and rehabilitation services, or any agent of any of those organizations shall be forwarded to the department on aging appeals section.

(2) Delivering a copy of a written request for hearing by telecopier or facsimile machine transmission to the department on aging shall be deemed an effective filing only if the original written request for hearing is mailed to the department within 10 days after the date on which the copy was transmitted.

(g) Each request for a hearing shall state clearly the proposed action or the action upon which a hearing is requested. The written request for a hearing shall be included in the department's official record of agency action and record of a hearing as evidence received by it. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended Nov. 14, 1997.)

26-4-2. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-34, Oct. 23, 1985; amended May 1, 1986; amended May 1, 1987; revoked Nov. 14, 1997.)

26-4-3. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984;

effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; revoked Nov. 14, 1997.)

26-4-4. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; revoked Nov. 14, 1997.)

26-4-5. Definitions. As used in article 4 of the department's regulations, the following terms shall have these meanings.

(a) "Appellant" means the area agency on aging, customer, service provider, or an applicant wishing to be a customer or service provider who is affected by, and wishes to appeal, an action or proposed action.

(b) "Customer" means a person who has applied for or asked to receive, or who is receiving, services or benefits from any program, other than a medicaid program, administered by the department.

(c) "Respondent" means the department on aging, an area on aging, a service provider, or an agent whose action or proposed action is being appealed.

(d) "Agent" means a person or organization authorized by grant, subgrant, contract, subcontract, or any other formal or informal arrangement to take action and perform services on behalf of the secretary, the department, an area agency, or a service provider.

(e) "Party" means either an appellant or a respondent, while "parties" means both the appellant and respondent. (Authorized by and implementing K.S.A. 75-5908 and K.S.A. 1996 Supp. 75-5928 and 75-5931; effective Nov. 14, 1997.)

26-4-6. Pre-appeal administrative processes. Before the filing of a written request for a hearing, the parties may engage in any formal or informal administrative procedure or process, the purpose of which is to resolve a dispute or disagreement, to reach a compromise or settlement, or to narrow and define the issues to be appealed. Participation in any pre-appeal administrative process is voluntary and shall not toll or alter in any way the period of time during which an appellant must file a written request for a hearing with the department under K.A.R. 26-4-1 and any amendments. The parties shall not be required to terminate any formal or informal administrative procedure or process when an appellant files a

written request for a hearing. (Authorized by and implementing K.S.A. 75-5908 and K.S.A. 1996 Supp. 75-5928 and 75-5931; effective Nov. 14, 1997.)

26-4-7. Notice to respondent; presiding officer; summary of respondent's action; notice to parties of hearing date. (a) Each respondent shall be mailed a copy of the appellant's written request for a hearing by the department within two working days after the written request is timely filed with the department.

(b) After the timely filing of a written request for a hearing, a person to serve as the presiding officer who administers and controls the hearing process shall be designated by the secretary.

(c) The respondent shall prepare and submit to the presiding officer a written summary of its action or proposed action, including a chronological listing of the relevant facts, a recitation of all relevant legal authorities and policies, and an explanation of the reasoning that forms the basis of the action being appealed. The original summary shall be mailed to the department and a copy mailed to the appellant within 15 days after the date on which the respondent receives a copy of the appellant's written request for a hearing from the department. The respondent's summary shall be included in the department's official record of agency action and record of a hearing as evidence received by it.

(d) The appellant and the respondent shall be mailed a written notice of hearing from the department or the presiding officer, identifying the time, date, and place for the hearing at least 15 days before the hearing date identified in the written notice. (Authorized by and implementing K.S.A. 75-5908 and K.S.A. 1996 Supp. 75-5928 and 75-5931; effective Nov. 14, 1997.)

26-4-8. Post-appeal, prehearing reviews of action and settlement procedures. (a) After an appellant files for hearing, a respondent shall review and reevaluate the respondent's action in the course of preparing the summary of its action required K.A.R. 26-4-7 and any amendments. Before the hearing, the appellant shall participate in any grievance or settlement procedure set out in the respondent's written policies.

(b) The parties may communicate directly with each other or through their authorized representatives at any time before the requested hearing to discuss the facts, their positions, their differences, and possible resolutions or settlements.

(c) No testimony or writings relating directly to any prehearing offers of settlement made by either party shall be solicited, introduced, offered, or admitted at a hearing before a presiding officer. In reaching a decision on any issue, the presiding officer shall not consider any information about any prehearing settlement discussions or offers that may be inadvertently disclosed at a hearing. This subsection shall not preclude the presiding officer's consideration of any prehearing stipulations or orders agreed upon in writing by the parties.

(d) The parties shall inform the department and the presiding officer immediately and, when time permits before a hearing, in writing, when they reach any compromise or settlement that eliminates the need for a hearing. Written information of a compromise or settlement shall be included in the department's official record of agency action and record of a hearing as evidence received by it.

(e) An order dismissing an appellant's appeal or permitting an appellant to withdraw the appeal shall be issued by the presiding officer upon receipt of satisfactory evidence from either party that a hearing is no longer necessary due to settlement or compromise. Consent orders, settlement agreements, or stipulations signed by both parties or signed requests to withdraw or dismiss a request for hearing are types of acceptable forms of evidence that the hearing is no longer required and shall be included in the department's official record of agency action and record of a hearing as evidence received by it. (Authorized by and implementing K.S.A. 75-5908 and K.S.A. 1996 Supp. 75-5928 and 75-5931; effective Nov. 14, 1997.)

26-4-9. Department's review of its actions; changed actions; resolution and dismissals. (a) Upon the department's receipt of a written request for a hearing involving the secretary's action, a review shall be made of that action by the department. After the action has been reviewed, it shall be amended, altered, reversed, rescinded, or upheld, as deemed necessary.

(b) If the action is amended, reversed, rescinded, or altered, the appellant shall be given written notice of that change in action by the department. An appellant who is dissatisfied with the change in action shall continue with the original appeal and is not required to file a new written request for a hearing on the changed action. The appeal shall proceed on the changed action.

(c) If the parties resolve their differences over the action being appealed, the presiding officer shall be notified of the resolution by a written report from the department, with a copy of the written resolution report being sent to the appellant. The presiding officer shall dismiss the appellant's request for a hearing if the presiding officer does not receive any further correspondence from the appellant within 10 days after receiving the department's written resolution report. The resolution report and any correspondence from the appellant shall be included in the department's official record of agency action and record of a hearing as evidence received by it. (Authorized by and implementing K.S.A. 75-5908 and K.S.A. 1996 Supp. 75-5928 and 75-5931; effective Nov. 14, 1997.)

26-4-10. Hearing; presiding officer; hearing panel; prehearing and posthearing matters; orders of presiding officer. (a) The person designated and appointed by the secretary as the presiding officer pursuant to K.A.R. 26-4-7 and any amendments shall conduct the hearing and render a decision. Instead of one person, a hearing panel of three persons to hold the hearing may be designated and appointed by the secretary, but only one person on that panel shall be designated to serve as the presiding officer. The decision of the panel shall be the decision with which at least two members of the panel agree.

(b) Either party may be represented by an attorney. An organization may be represented by an employee. An individual who is unable to communicate effectively may be represented by a family member, a guardian, a conservator, or other personal representative at the hearing. If a party is represented at the hearing, the representative shall speak for the party and present the party's evidence through exhibits and the testimony of witnesses, including the party.

(c) The presiding officer may conduct prehearing, hearing, and posthearing matters in accordance with procedures set out in either or both of the Kansas rules of civil procedure, K.S.A. 60-101 *et seq.* and any amendments of the Kansas administrative procedure act, K.S.A. 77-501 *et seq.* and any amendments.

(d) The presiding officer shall conduct the hearing in an informal manner. The presiding officer shall generally adhere to the following format or to some adaptation that the presiding officer

finds will promote the interests of time, economy, or fairness under all the circumstances:

(1) appellant's opening statement or argument, followed by respondent's opening statement or argument;

(2) appellant's case, with respondent being given the opportunity to cross-examine appellant's witnesses after appellant's direct examination, followed by any re-direct and re-cross-examinations;

(3) respondent's case, with appellant being given the opportunity to cross-examine respondent's witnesses after respondent's direct examination, followed by any re-direct and re-cross-examinations;

(4) appellant's rebuttal case of respondent's case;

(5) respondent's surrebuttal case of appellant's rebuttal case;

(6) appellant's closing argument, followed by respondent's closing argument, followed by appellant's rebuttal to respondent's closing argument.

(e) the presiding officer may make any order before, during, or after the hearing that the presiding officer deems necessary to ensure a fair hearing for both parties. These orders may include orders relating to prehearing matters such as schedules, deadlines, conferences, prehearing orders, oral or written discovery, pleadings, motions, briefs, objections, and other responses; orders relating to hearing issues such as motions, altering hearing format, time limits for statement or arguments, and objections to evidence, exhibits, or testimony; and orders relating to posthearing issues such as *nunc pro tunc* orders, motions, proposed findings of fact and conclusions of law. When both parties were represented by attorneys at the hearing, the presiding officer may order both parties to submit proposed findings of fact and conclusions of law.

(f) The presiding officer may issue an order granting either party additional time to do some act mandated by statute, regulation, or prior order of the presiding officer. The presiding officer may also order a continuance of a scheduled hearing, conference, or other matter.

(g) Unless both parties specifically agree to the application of the Kansas rules of evidence set out in K.S.A. 60-401 *et seq.* and any amendments, the presiding officer may consider any evidence, including any writing, document, record, exhibit, object, or testimony, presented at the hearing, regardless of whether or not any foundation was laid

for it or whether it was formally introduced, offered, or admitted into evidence, as long as that evidence is relevant to an issue being decided at the hearing.

(h) All writings, evidence, documents, and orders relating to prehearing, hearing, and posthearing matters shall be included in the department's official record of agency action and record of a hearing as evidence received by it. (Authorized by and implementing K.S.A. 75-5908 and K.S.A. 1996 Supp. 75-5928 and 75-5931; effective Nov. 14, 1997.)

26-4-11. Recording the hearing; transcripts. (a) A taped recording or other electronically recorded record of the hearing, any prehearing conferences, and any posthearing conferences shall be made by the department at its expense.

(b) A party may have a hearing recorded by a stenographer or court reporter at its own expense, and the opposing party may obtain a copy of the transcript of that recording upon payment of the stenographer's or court reporter's charges for a copy. Parties may agree to share the expense of a stenographer or court reporter and transcripts.

(c) Transcripts of any matter recorded by the department shall be made by the department at the request of either party or the presiding officer. A party requesting a transcript shall pay the department's costs for transcribing, printing, copying, and delivering the transcript. A copy of any transcript prepared by the department or either party or at the request of either party shall be included in the department's official record of agency action and record of a hearing as evidence received by it. (Authorized by and implementing K.S.A. 75-5908 and K.S.A. 1996 Supp. 75-5928 and 75-5931; effective Nov. 14, 1997.)

26-4-12. Presiding officer's decision; when final order. (a) The presiding officer or hearing panel shall issue a signed, written decision and mail copies to the parties within 30 days after the latest of the dates on which the following occurred:

- (1) the last day of the hearing;
- (2) receipt of the proposed findings of fact and conclusions of law; or
- (3) the presiding officer's receipt of a copy of the transcript of the hearing. A written decision rendered by a hearing panel shall be signed by all of its members, with a dissenting member so identified. The date on which the decision is mailed to the parties shall be identified on a certificate of

mailing signed by the presiding officer, or by the presiding officer's designee, and attached as a part of the written decision.

(b) In the written decision, the presiding officer or hearing panel shall clearly include and identify the following information in separately numbered or lettered paragraphs or sections:

(1) findings of facts based on specifically identified evidence that the presiding officer or majority of the panel decides is reliable and relevant;

(2) policies that are applicable to an issue or to the decision;

(3) conclusions of law specifically identifying statutes and regulations that the presiding officer or the majority of the panel decides are controlling and applicable to the facts; and

(4) a summary of the decision on each issue decided.

(c) The presiding officer's or hearing panel's written decision shall be included in the department's official record of agency action and record of a hearing as evidence received by it.

(d) The written decision of a presiding officer or hearing panel is an initial order that becomes a final order 21 days after the date on which it is mailed to the parties, unless a party has appealed the decision by filing with the department a written request for the secretary's review of the presiding officer's decision within 20 days after the date on which the decision was mailed to the parties.

(e) The 30-day period for filing a petition for review of agency action, in accordance with the Kansas act for judicial review and civil enforcement of agency actions, K.S.A. 77-601 *et seq.* and any amendments, shall begin to run on the date on which the presiding officer's written decision becomes a final order under subsection (d) above. (Authorized by and implementing K.S.A. 75-5908 and K.S.A. 1996 Supp. 75-5928 and 75-5931; effective Nov. 14, 1997.)

26-4-13. Appeal of presiding officer's decision; review and decision by the secretary; final order. (a) Either party may appeal the presiding officer's decision and obtain the secretary's review of the presiding officer's or hearing panel decision by filing a written request for review with the department within 20 days after the date on which the decision was mailed to the parties. The party filing the written request for the review shall simultaneously mail a copy of the request for review to the opposing party.

(b) The written request for the secretary's review shall include, or have attached to it at the time of filing, a memorandum, brief, or written statement in support that meets these requirements:

(1) identifies the mailing date of the presiding officer's or the hearing panel's written decision to be reviewed;

(2) identifies the alleged fact-finding errors made by the presiding officer or the hearing panel, listing those findings of fact in which the alleged errors were made;

(3) identifies the alleged errors of law made by the presiding officer or the hearing panel, listing those conclusions of law in which the alleged errors were made; and

(4) includes arguments or reasoning why the presiding officer's or the hearing panel's decision should be amended, revised, overruled, or reversed, in whole or in part. The written request and any attachment shall be included in the department's official record of agency action and record of a hearing as evidence received by it.

(c) A party other than the party that files a written request for the secretary's review may file a memorandum or brief opposing the written request for review. A party's memorandum or brief in opposition to a request for review shall be included in the department's official record of agency action and record of a hearing as evidence received by it.

(d)(1) Oral arguments of the parties may be heard by the secretary. The request for review, the parties' memoranda or briefs in support of and opposing the request, the presiding officer's decision, and any portions of the record deemed necessary shall be reviewed and considered by the secretary or a person who is not the presiding officer and is designated by the secretary, before issuing a final order reviewed, approved, and signed by the secretary.

(2) The secretary's final order shall amend, revise, affirm, or reverse the presiding officer's decision, in whole or in part, and shall direct any action deemed appropriate under the circumstances. The parties shall be mailed a copy of the secretary's final order. The secretary's final order shall be included in the department's official record of agency action and record of a hearing as evidence received by it.

(e) The 30-day period for filing a petition for review of agency action in accordance with the Kansas act for judicial review and civil enforce-

ment of agency actions, K.S.A. 77-601 *et seq.* and any amendments, shall begin to run on the date the secretary's final order is mailed to the parties under subsection (d) above. (Authorized by and implementing K.S.A. 75-5908 and K.S.A. 1996 Supp. 75-5928 and 75-5931; effective Nov. 14, 1997.)

26-4-14. Venue. Hearings requested by an appellant who is a customer shall be held in the planning and service area in which the customer resides, unless the presiding officer designates another location. Hearings requested by appellants other than customers shall be held face-to-face in Topeka, Kansas. (Authorized by and implementing K.S.A. 75-5908 and K.S.A. 1996 Supp. 75-5928 and 75-5931; effective Nov. 14, 1997.)

26-4-15. Telephone proceedings. Except as provided in K.A.R. 26-4-14 and any amendments, the presiding officer may conduct any appeal proceeding, including the hearing or any prehearing or posthearing conference of any type, by conference telephone call. The presiding officer may grant a party's written request for a face-to-face proceeding if the requesting party shows good cause why a fair and impartial proceeding could not be conducted by telephone. (Authorized by and implementing K.S.A. 75-5908 and K.S.A. 1996 Supp. 75-5928 and 75-5931; effective Nov. 14, 1997.)

Article 4a.—CUSTOMER AND PROVIDER APPEALS IN MEDICAID PROGRAMS

26-4a-1. Medicaid services fair hearing program; application of department of social and rehabilitation services' fair hearing regulations; requests for fair hearings. (a) The regulations in this article 4a shall apply only to the medicaid long-term care programs and services that the secretary of aging administers on behalf of the secretary of social and rehabilitation services, pursuant to K.S.A. 1996 Supp. 39-968, 75-5321a, and 75-5945 *et seq.*, as amended.

(b) A fair hearing program to process and decide appeals involving the medicaid long-term care programs and services and the customers and providers of those services shall be administered through the department of social and rehabilitation services' administrative hearing section in accordance with the secretary of social and rehabilitation services' fair hearing regulations set out in K.A.R. 30-7-64 *et seq.*, as in effect on June 1, 1997.

(c) To appeal a written decision, final action, or order made by the secretary of aging or any of the department on aging's employees or agents involving a medicaid program or service, a request for a fair hearing shall be made in writing to the department of social and rehabilitation services' administrative hearings section, pursuant to K.A.R. 30-7-68, as in effect on June 1, 1997, within the time provided therein.

(d) Written requests for hearings that are misdirected to the department on aging or any of its regional offices, an area agency on aging, a service provider, or any agent of any of those organizations shall be forwarded to the department of social and rehabilitation services' administrative hearings section. (Authorized by and implementing K.S.A. 1996 Supp. 75-5908 and K.S.A. 1996 Supp. 75-5945; effective, T-26-7-1-97, July 1, 1997; effective Nov. 14, 1997.)

Article 5.—IN-HOME NUTRITION PROGRAM

26-5-1. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; revoked May 31, 2002.)

26-5-2. Provider accountability. (a) Upon receipt of funding from the department, each in-home service provider shall comply with reporting requirements of K.A.R. 26-2-3.

(b) Accurate, current, and complete disclosure of the financial results of the program shall be made in accordance with the financial reporting requirements of the contract.

(c) Accounting records shall contain information pertaining to authorizations, obligations, unobligated balances, assets, outlays, income, liabilities, project income, and other income and shall identify adequately the source and application of funds for program activities.

(d) Effective control and accountability shall be maintained for all contract funds, real and personal property, and other assets. Recipients shall adequately safeguard all such property and shall assure that the property is used solely by authorized persons.

(e) Accounting records shall be supported by source documentation such as cancelled checks, paid bills, payrolls, and contract documents.

(f) Each recipient shall follow a systematic

method to assure timely and appropriate resolution of audit findings and recommendations.

(g) Each recipient shall have an annual audit which complies with K.A.R. 26-2-9 performed by a certified public accountant. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988.)

26-5-3. Termination of contracts. (a) A contract may be terminated by the department for cause in whole or in part, at any time before the expiration date, if the provider has failed to comply with the terms of the contract. The provider shall be notified in writing by the department of the determination and the reasons for the termination, together with the effective date.

(b) A contract under the in-home nutrition program may be terminated on other grounds by either party at any time upon 30-day written notice, unless a different time for notice is provided for in the contract.

(c) The applicant denied funding, or the provider whose contract is terminated for cause or on other grounds, shall have the right to appeal the decision by following the procedures outlined in K.A.R. 26-4-1 *et seq.* and any amendments. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; amended Nov. 14, 1997.)

26-5-4. Procurement. (a) The procurement transactions made by in-home meals providers shall be conducted in a manner to provide competition in accordance with K.A.R. 26-3-1.

(b) The contracts for food service between an in-home meal provider and a profit-making prepared food provider shall be approved by the department prior to implementation. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986.)

26-5-5. Services to be provided. (a) Each in-home nutrition service provider shall provide a hot or other appropriate home-delivered meal to eligible homebound individuals at least once per day five or more days per week.

(b) Each in-home nutrition service provider shall:

(1) comply with all state and local laws and regulations governing sanitation, preparation and handling of food; and

(2) follow appropriate procedures which assure

preservation of nutritional values and food safety in purchasing food and preparing and delivering meals.

(c) Each meal served by the in-home nutrition program shall contain at least one-third of the current recommended daily dietary allowances as established by the Food and Nutrition Board of the National Academy of Sciences—National Research Council and as referenced in the 1992 edition of the Kansas diet manual of the Kansas Dietetic Association, Inc. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; amended Sept. 7, 1993.)

26-5-6. Method of determining eligibility for in-home meals. (a) A certified assessor shall make a written determination of the eligibility of each customer requesting in-home nutrition services.

(b) Assessments shall be conducted at the customer's residence.

(c) Assessments shall be completed according to the time frame prescribed by the secretary. (Authorized by and implementing K.S.A. 2001 Supp. 75-5908; effective, T-86-48, Dec. 12, 1985; effective May 1, 1986; amended Sept. 7, 1993; amended, T-26-7-1-96, July 1, 1996; amended Nov. 8, 1996; amended Nov. 14, 1997; amended May 31, 2002.)

26-5-7. Client contributions. The in-home meal service provider shall:

(a) inform the client of the opportunity to contribute toward the cost of the service;

(b) provide for a confidential collection of client contributions;

(c) not deny any eligible person a meal if the person does not contribute to the cost of the meal; and

(d) use the meal contributions, in the in-home nutrition program, for current costs and to reduce the state cost of the program. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986.)

26-5-8. State program income. (a) (1) Program income includes, but is not limited to:

(A) proceeds from the sale of personal or real property with an acquisition cost of less than \$1,000;

(B) usage or rental fees;

(C) sale of assets purchased with grant funds with an acquisition cost of less than \$1,000;

(D) royalties on patents and copyrights; and

(E) contributions of recipients of service and interest on such contributions.

(2) In other cases, the department shall apply the following tests to determine if a specific revenue is to be classified as state program income, and it shall be subject to the provisions of this section if the revenue:

(A) Can be clearly shown to have been generated from some particular activity conducted by the grantee or contractee; and

(B) was generated by an activity supported in whole or in part by state funds.

(b) The following specific revenues shall not be included as state program income:

(1) Rebates, discounts and recoveries;

(2) income earned by individuals or a group of project participants, when such income accrues directly to the participants;

(3) revenues, including taxes and special assessments that are raised by a grantee or contractee which is a government with governing powers; and

(4) tuition and related fees received by an institution of higher education for a regularly offered course taught by an employee who is performing under a grant or contract.

(c) State program income may be used under one or both of the alternatives below:

(1) Deduction alternative. The income may be used for allowable costs of the project or program. However, if there is a cost-sharing or matching requirement, costs borne by the income may not count toward satisfying that requirement. The income shall be used for current costs; or

(2) Cost-sharing or matching alternative. The income may be used for allowable costs of the project or program and the costs borne by the income may assist in satisfying a cost-sharing or matching requirement. The maximum percentage of federal participation may be applied to total allowable costs and third-party in-kind contributions. The income shall be used for current costs.

(d) Additional requirements.

(1) All state program income earned under grants financed by state funds and federal Title III, part B, part C(1), and part C(2) shall be used only for services allowable under the section from which it was earned.

(2) All state program income shall be used during the project year in which the income is earned.

(e) Accountability for state program income.

(1) Each grantee and contractee shall utilize

generally accepted accounting standards for collecting and recording state program income. Such standards shall require the accurate recording of amounts collected at the project and site levels and the subsequent use of these funds.

(2) Each recipient shall account for state program income on a daily basis, and shall report such income to the area agency on aging through the established financial reporting system.

(3) Each area agency shall report state program income collected to the department.

(4) Accounting records and reports submitted by the recipient to the area agency on aging shall provide a clear audit trail on all state program income and the uses of the income.

(5) Recipient account records and reports shall accurately reflect the receipt and use of state program income funds separately from the receipt and use of other funds. (Authorized by and implementing K.S.A. 75-5908; effective, T-89-14, April 26, 1988; effective Oct. 1, 1988.)

26-5-9. Limitation on delivery of in-home or home-delivered meals. The provider shall only provide a meal to an eligible individual if the meal meets the individual's special dietary needs and conforms to the department's published meal pattern. (Authorized by and implementing K.S.A. 75-5908; effective, T-26-7-1-96, July 1, 1996; effective Nov. 8, 1996.)

26-5-10. Targeting. Each provider shall give priority for receipt of in-home or home-delivered meals to those eligible individuals who are most in need and at greatest nutritional risk as determined by a nutritional risk assessment on the state of Kansas uniform assessment instrument adopted in K.A.R. 120-1-1. (Authorized by and implementing K.S.A. 75-5908; effective, T-26-7-1-96, July 1, 1996; effective Nov. 8, 1996.)

Article 6.—EMPLOYMENT PROGRAM

26-6-1. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; revoked Nov. 8, 1996.)

26-6-2. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; revoked Nov. 8, 1996.)

26-6-3. (Authorized by and implementing K.S.A. 75-5908; effective May 1, 1986; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; revoked Nov. 8, 1996.)

26-6-4. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; revoked Nov. 8, 1996.)

26-6-5. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; revoked Nov. 8, 1996.)

26-6-6. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; revoked Nov. 8, 1996.)

26-6-7. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; revoked Nov. 8, 1996.)

26-6-8. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; revoked Nov. 8, 1996.)

Article 7.—RESERVED

Article 8.—SENIOR CARE ACT

26-8-1. Definitions. (a) "Activities of daily living (ADL's)" means those personal, functional activities required by an individual for continued well-being, including eating, dressing, bathing, transferring, walking, retaining mobility, and toileting.

(b) "Assessment" means the completion of a form to determine the initial and ongoing eligibility and need for services.

(c) "Customer" means any older person who meets the eligibility requirements established in K.A.R. 26-8-2 and whose services are being funded at least in part by the senior care act program.

(d) "Family" means one or more adults and children, if any, related by blood or law and residing in the same household. If adults, other than spouses, reside together, each will be considered a separate family. Emancipated minors and children living under the care of individuals not legally responsible for that care shall be considered one-person families.

(e) "Income" means the monthly sum of in-

come received by a family from the following sources:

- (1) Gross wages or salary;
 - (2) income from self-employment;
 - (3) social security;
 - (4) dividends;
 - (5) interest;
 - (6) income from estate or trusts;
 - (7) rental income;
 - (8) royalties;
 - (9) public assistance or welfare payments;
 - (10) pensions and annuities;
 - (11) unemployment compensation;
 - (12) workers compensation;
 - (13) alimony;
 - (14) veterans' pensions; and
 - (15) adjusted net farm income.
- (f) "Instrumental activities of daily living" (IADL's) means meal preparation, shopping, medication management and treatment, house-keeping and laundry, money management, transportation, and telephone communication.
- (g) "Level of care" means a measurement of an individual's functional ability level that could temporarily or permanently restrict the individual's ability to function independently.
- (h) "Liquid assets" means the following:
- (1) Cash on hand;
 - (2) funds in checking, savings, money market, and individual retirement accounts;
 - (3) stocks;
 - (4) bonds;
 - (5) savings bonds;
 - (6) certificates of deposit;
 - (7) the cash value of life insurance policies; and
 - (8) mutual funds.
- (i) "One-time service" means an activity that is not intended to be ongoing and that has a unit of service of one dollar.
- (j) "Senior care act" means K.S.A. 75-5926 through K.S.A. 75-5936, and amendments thereto, which establishes a program of in-home support services for eligible persons 60 years of age and older. (Authorized by K.S.A. 2001 Supp. 75-5928, as amended by L. 2002, Ch. 65, § 1 and K.S.A. 75-5931, as amended by L. 2002, Ch. 65, § 4; implementing K.S.A. 2001 Supp. 75-5928, as amended by L. 2002, Ch. 65, § 1, K.S.A. 75-5929, as amended by L. 2002, Ch. 65, § 2, K.S.A. 75-5930, as amended by L. 2002, Ch. 65, § 3, K.S.A. 75-5931, as amended by L. 2002, Ch. 65, § 4, and K.S.A. 75-5933, as amended by L. 2002, Ch. 65, § 6; effective, T-26-10-17-89, Oct. 17, 1989; ef-

fective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; amended, T-26-7-22-93, July 22, 1993; amended Sept. 7, 1993; amended Nov. 7, 1994; amended July 28, 1995; amended, T-26-6-27-02, July 1, 2002; amended Oct. 25, 2002.)

26-8-2. Eligibility criteria. (a) All customers shall be residents of Kansas who are 60 years of age or older.

(b) Customers who receive only assessment or case management shall not be subject to the eligibility criteria below.

(c) Each customer of the senior care act program on June 30, 2002 shall continue to be eligible if the customer meets the following conditions:

(1) Has physical or mental limitations that restrict the ability to perform one or more activities of daily living or instrumental activities of daily living; and

(2) meets the targeting criteria used by the area agency on aging on June 30, 2002.

(d) Each customer of the income eligible program on June 30, 2001 who has remained eligible since July 1, 2001 shall be eligible for the senior care act program if the customer has a level of care score of at least 15, as determined by an assessment.

(e) For individuals that do not meet the criteria in subsection (c) or (d) above, an eligible person shall have a level-of-care score of at least 26, as determined by an assessment.

(f) Each applicant who met the criteria in subsection (c) or (d) and whose services were terminated after July 1, 2002 shall meet the criteria specified in subsection (e).

(g) Medicaid home- and community-based services customers shall be eligible to receive only senior care act services that are not funded through the Medicaid program. (Authorized by and implementing K.S.A. 2001 Supp. 75-5928, as amended by L. 2002, Ch. 65, § 1 and K.S.A. 75-5929, as amended by L. 2002, Ch. 65, § 2; effective, T-26-10-17-89, Oct. 17, 1989; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; amended, T-26-6-27-02, July 1, 2002; amended Oct. 25, 2002.)

26-8-3. (Authorized by and implementing K.S.A. 75-5928; effective, T-26-10-17-89, Oct. 17, 1989; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; amended, T-26-7-22-93, July 22, 1993; amended Sept. 7, 1993; amended Nov. 7, 1994; revoked, T-26-6-27-02, July 1, 2002; revoked Oct. 25, 2002.)

26-8-4. (Authorized by K.S.A. 75-5928, 75-5931; implementing K.S.A. 75-5928, 75-5931 and 75-5933; effective, T-26-10-17-89, Oct. 17, 1989; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; amended, T-26-7-22-93, July 22, 1993; amended Sept. 7, 1993; amended Nov. 7, 1994; amended July 28, 1995; revoked Jan. 7, 2000.)

26-8-5. Assessment. To determine eligibility for services under the senior care act, the area agency on aging shall complete an assessment before implementation of services and at least once every 365 days thereafter. The assessment instrument shall be a form prescribed by the secretary. (Authorized by and implementing K.S.A. 75-5930, as amended by L. 2002, Ch. 65, § 3; effective, T-26-10-17-89, Oct. 17, 1989; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; amended Nov. 7, 1994; amended, T-26-6-27-02, July 1, 2002; amended Oct. 25, 2002.)

26-8-6. (Authorized by and implementing K.S.A. 75-5931; effective, T-26-10-17-89, Oct. 17, 1989; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; revoked, T-26-6-27-02, July 1, 2002; revoked Oct. 25, 2002.)

26-8-7. Maximum expenditures per customer and customer fees. (a) The maximum monthly expenditure for services per customer shall be \$1,445.00. This amount shall not include expenditures for assessment, case management, and any one-time service.

(b) The customer's fee shall not include case management or assessment.

(c) Each customer's fee shall be based on the customer's income and liquid assets.

(d) If a customer refuses to disclose the customer's income and liquid assets, then that customer shall pay 100% of the cost of the service.

(Authorized by and implementing K.S.A. 75-5929, as amended by L. 2002, Ch. 65, § 2 and K.S.A. 75-5931, as amended by L. 2002, Ch. 65, § 4; effective, T-26-10-17-89, Oct. 17, 1989; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; amended, T-26-7-22-93, July 22, 1993; amended Sept. 7, 1993; amended Nov. 7, 1994; amended, T-26-6-27-02, July 1, 2002; amended Oct. 25, 2002.)

26-8-8. Termination. Services provided under this act shall be terminated by the area agency on aging for any of the following reasons:

(a) The customer moved to a nursing facility.

(b) The customer died.

(c) The customer moved out of the service area.

(d) The customer chose to terminate services.

(e) The customer no longer meets the eligibility criteria.

(f) The customer has not paid the fees, and 60 days have passed since the original billing date.

(g) The customer did not accurately report the customer's income and liquid assets and chooses not to pay the applicable fees.

(h) The service was provided one time.

(i) The program or service ended or was terminated.

(j) The service was discontinued due to the lack of service provider or staff.

(k) The customer is determined to be no longer safe in the customer's own home.

(l) The customer's whereabouts are unknown.

(Authorized by and implementing K.S.A. 75-5931, as amended by L. 2002, Ch. 65, § 4; effective, T-26-10-17-89, Oct. 17, 1989; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; amended July 28, 1995; amended Nov. 14, 1997; amended, T-26-6-27-02, July 1, 2002; amended Oct. 25, 2002.)

26-8-9. (Authorized by and implementing K.S.A. 75-5931; effective, T-26-10-17-89, Oct. 17, 1989; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; amended Nov. 14, 1997; revoked, T-26-6-27-02, July 1, 2002; revoked Oct. 25, 2002.)

26-8-10. (Authorized by and implementing K.S.A. 75-5908; effective, T-26-10-17-89, Oct. 17, 1989; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; revoked Nov. 14, 1997.)

26-8-11. (Authorized by and implementing K.S.A. 75-5908; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; revoked Nov. 14, 1997.)

26-8-12. (Authorized by and implementing K.S.A. 75-5931; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; revoked, T-26-6-27-02, July 1, 2002; revoked Oct. 25, 2002.)

26-8-13. (Authorized by and implementing K.S.A. 75-5931; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; revoked, T-26-6-27-02, July 1, 2002; revoked Oct. 25, 2002.)

26-8-14. (Authorized by and implementing K.S.A. 75-5931, 75-5933, and 75-5935; effective,

T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; revoked, T-26-6-27-02, July 1, 2002; revoked Oct. 25, 2002.)

26-8-15. Matching funds. (a) To be eligible for funds allocated pursuant to K.S.A. 75-5929 (a)(2) and amendments thereto, each area agency on aging shall provide matching funds for services on the basis of not less than \$1 for every \$2 of state funds.

(b) To be eligible for funds allocated pursuant to K.S.A. 75-5929 (a)(3) and amendments thereto, each area agency on aging shall provide funds from ad valorem property tax levies for services on the basis of not less than \$1 for every \$1 of state funds.

(c) Each area agency on aging providing matching funds shall submit to the department written documentation from the local unit of government or the single entity responsible for ad valorem property tax levies for services for the aging, as designated by a local unit of government, stating that the local unit of government has provided ad valorem property tax levies for services under this act.

(Authorized by and implementing K.S.A. 75-5929, as amended by L. 2002, Ch. 65, § 2; effective, T-26-6-27-02, July 1, 2002; effective Oct. 25, 2002.)

Article 9.—CLIENT ASSESSMENT, REFERRAL, AND EVALUATION PROGRAM

26-9-1. Client assessment, referral, and evaluation (CARE) for nursing facilities. (a) Each individual seeking admission to a nursing facility or nursing facility for mental health shall, prior to admission, receive and complete a preadmission assessment, evaluation, and referral to all available community resources, including nursing facilities, with the following exceptions:

(1) an individual who has entered an acute care facility from a nursing facility and is returning to a nursing facility;

(2) an individual transferred from a nursing facility to another nursing facility;

(3) an individual entering a nursing facility conducted by and for the adherents of a recognized church or religious denomination for the purpose of providing care and services for those who depend upon spiritual means, through prayer alone, for healing; or

(4) an individual, entering a nursing facility

from a hospital and whose length of stay is expected to be 30 or fewer days based on a physician's certification.

(b) An individual entering a nursing facility from the community, and whose stay is expected to be 30 days or fewer, based on a physician's certification, shall be exempt from Sections III through VI of the CARE assessment, as adopted in K.A.R. 120-1-1, but shall have Sections I & II of the CARE assessment completed prior to admission.

(c) Unless in the judgment of a qualified assessor, the person's physical, emotional, social or cognitive status has changed to the extent that another assessment is warranted, the preadmission assessment shall be valid for one year from the date of the initial assessment and reimbursement for the assessment shall be limited to one annual assessment per individual. (Authorized by and implementing K.S.A. 1994 Supp. 39-968, effective, T-26-6-28-95, June 28, 1995; effective Aug. 7, 1995.)

Article 10.—ADMINISTRATION OF MEDICAID PROGRAMS; NURSING FACILITY SERVICES PAYMENT PROGRAM, HOME- AND COMMUNITY- BASED SERVICES WAIVER PROGRAM FOR THE FRAIL ELDERLY, AND TARGETED CASE MANAGEMENT SERVICES PROGRAM

26-10-1. Administration of medicaid programs. The long-term care medicaid programs that are described in K.A.R. 30-2-17, the administration of which is transferred to the secretary of aging from the secretary of social and rehabilitation services, pursuant to K.S.A. 1996 Supp. 39-968, 75-5321a, and 75-5945 *et seq.*, as amended, shall be administered in accordance with the authorities referenced in K.S.A. 1996 Supp. 75-5945, as amended, and with K.A.R. 30-2-17, as in effect on July 1, 1997. (Authorized by and implementing K.S.A. 1996 Supp. 75-5908 and K.S.A. 1996 Supp. 75-5945; effective, T-26-7-1-97, July 1, 1997; effective Nov. 14, 1997.)

Article 11.—KANSAS SENIOR PHARMACY ASSISTANCE PROGRAM

26-11-1. Eligibility. There shall be hereby established a Kansas senior pharmacy assistance program.

(a) To be eligible to participate in the Kansas

senior pharmacy assistance program, each individual shall meet the following requirements:

(1) Meet the eligibility criteria specified in K.S.A. 75-5961, and amendments thereto; and

(2) be a participant in the qualified Medicare beneficiary program or low income Medicare beneficiary program, as determined by the Kansas department of social and rehabilitation services.

(b) This regulation shall be effective on and after September 1, 2002. (Authorized by and implementing K.S.A. 2001 Supp. 75-5961; effective, T-26-9-5-01, Oct. 1, 2001; effective, T-26-12-11-01, Dec. 11, 2001; effective Sept. 6, 2002.)

26-11-2. Benefit limitations. (a) The drug benefit shall be limited to 70% of the individual's costs incurred for the drugs specified in subsection (b) and shall be limited to a maximum of \$1,200 per eligible individual.

(b) The drug benefit shall be limited to the costs for only the following drugs:

(1) Any legend prescription drug used to treat a chronic illness, which shall mean any drug taken regularly to treat an illness that persists over a long period of time; and

(2) insulin and those diabetic supplies not covered by Medicare.

(c) The drug benefit shall not apply toward the cost of any of the following drugs:

- (1) Over-the-counter drugs;
- (2) lifestyle drugs, including Viagra; or
- (3) prescription drugs for acute illnesses.

(d) This regulation shall be effective on and after September 1, 2002. (Authorized by and implementing K.S.A. 2001 Supp. 75-5961; effective, T-26-9-5-01, Oct. 1, 2001; effective, T-26-12-11-01, Dec. 11, 2001; effective Sept. 6, 2002.)

26-11-3. Priority of funding. (a) Not all requests for a drug benefit may be paid due to a lack of program funding.

(b) Drug benefit requests shall be prioritized according to the eligible individual's income level, and benefit payments shall be made until program funds are exhausted.

(c) Once program funds are exhausted, no eligible individual shall receive a benefit.

(d) This regulation shall be effective on and after September 1, 2002. (Authorized by and implementing K.S.A. 2001 Supp. 75-5961; effective, T-26-9-5-01, Oct. 1, 2001; effective, T-26-12-11-01, Dec. 11, 2001; effective Sept. 6, 2002.)

Article 39.—INFORMAL DISPUTE RESOLUTION

26-39-144. Definitions. The following definitions shall apply to all adult care homes except nursing facilities for mental health and intermediate care facilities for the mentally retarded.

(a) "Activities director" means an individual who meets at least one of the following requirements:

(1) Has a degree in therapeutic recreation;

(2) has two years of experience in a social or recreational program within the last five years, one of which was full-time in a patient activities program in a health care setting;

(3) is registered in Kansas as an occupational therapist or occupational therapy assistant;

(4) has a bachelor's degree in a therapeutic activity field in art therapy, horticultural therapy, music therapy, special education, or a related therapeutic activity field; or

(5) has completed a course approved by the department of health and environment in resident activities coordination and receives consultation from a therapeutic recreation specialist, an occupational therapist, an occupational therapy assistant, or an individual with a bachelor's degree in art therapy, music therapy, or horticultural therapy.

(b) "Administrator" means any individual who is charged with the general administration of a nursing facility, assisted living facility, or residential health care facility, whether or not the individual has an ownership interest in the adult care home. Each administrator of an adult care home shall be licensed in accordance with K.S.A. 65-3501 et seq., and amendments thereto.

(c) "Adult care home" means any nursing facility, assisted living facility, residential health care facility, home plus, boarding care home, and adult day care facility, all of which shall be licensed by the secretary of aging.

(d) "Adult day care" has the meaning specified in K.S.A. 39-923, and amendments thereto.

(e) "Advanced registered nurse practitioner" means an individual who is certified by the Kansas board of nursing as an advanced registered nurse practitioner.

(f) "Alteration" means any addition to, modification of, or modernization of the structure or usage of a facility.

(g) "Ambulatory resident" means any resident

who is physically and mentally capable of performing the following:

- (1) Getting in and out of bed; and
- (2) walking in a normal path to safety in a reasonable period of time without the assistance of another person.

(h) "Applicant" means any individual, firm, partnership, corporation, company, association, or joint stock association requesting a license to operate an adult care home.

(i) "Assisted living facility" has the meaning specified in K.S.A. 39-923, and amendments thereto.

(j) "Audiologist" means an individual who is licensed by the Kansas department of health and environment as an audiologist.

(k) "Basement" means the part of a building that is below grade.

(l) "Boarding care home" has the meaning specified in K.S.A. 39-923, and amendments thereto.

(m) "Change of ownership" means any transaction that results in a change of control over the capital assets of an adult care home.

(n) "Clinical record" means the record that includes all the information and entries reflecting each resident's course of stay in an adult care home.

(o) "Complicated feeding problems" shall include difficulty swallowing, recurrent lung aspirations, and tube, parenteral, or intravenous feedings.

(p) "Controlled substance" means any drug, substance, or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, K.S.A. 65-4107, K.S.A. 65-4109, K.S.A. 65-4111, and K.S.A. 65-4113, and amendments thereto.

(q) "Day shift" means any eight-hour to 12-hour work period that occurs between the hours of 6 a.m. and 9 p.m.

(r) "Department" means the Kansas department on aging.

(s) "Dietetic services supervisor" means an individual who meets one of the following requirements:

- (1) Is licensed in the state of Kansas as a dietitian;
- (2) has an associate's degree in dietetic technology from a program approved by the American dietetic association;
- (3) is a dietary manager who is certified by the board of the dietary managers' association; or
- (4) has training and experience in dietetic serv-

ices supervision and management that are determined by the secretary of health and environment to be equivalent in content to the requirement specified in paragraph (2) or (3) of this subsection.

(t) "Dietitian" means an individual who is licensed by the Kansas department of health and environment as a dietitian.

(u) "Direct care staff" means individuals employed by an adult care home who assist residents in activities of daily living. These activities may include the following:

- (1) Grooming;
- (2) eating;
- (3) toileting;
- (4) transferring; and
- (5) ambulation.

(v) "Director of nursing" means an individual who meets the following criteria:

- (1) Is licensed in Kansas as a registered professional nurse;
- (2) is employed full-time in a nursing facility; and
- (3) has the responsibility, administrative authority, and accountability for the supervision of nursing care provided to residents in a nursing facility.

(w) "Drug administration" means an act in which a single dose of a prescribed drug or biological is given by injection, inhalation, ingestion, or any other means to a resident by an authorized person in accordance with all laws and regulations governing the administration of drugs and biologicals. Drug administration shall entail the following:

- (1) Removing an individual dose from a labeled container, including a unit-dose container;
- (2) verifying the drug and dose with the physician's orders;
- (3) administering the dose to the proper resident; and
- (4) documenting the dose in the resident's clinical record.

(x) "Drug dispensing" means the delivery of one or more doses of a drug by a licensed pharmacist or physician. The drug shall be dispensed in a container and labeled in compliance with state and federal laws and regulations.

(y) "Full-time" means 35 or more hours per week.

(z) "Health information management practitioner" means an individual who is certified as a registered health information administrator or a registered health information technician by the

American health information management association.

(aa) "Home plus" has the meaning specified in K.S.A. 39-923, and amendments thereto.

(bb) "Interdisciplinary team" means the following:

(1) A registered nurse with responsibility for the care of the residents; and

(2) other appropriate staff, as identified by resident comprehensive assessments, who are responsible for the development of care plans for residents.

(cc) "Legal representative" means an individual person who has been appointed by a court of law as a guardian or has been selected by a resident in a durable power of attorney for health care decisions.

(dd) "Licensed mental health technician" means an individual licensed by the Kansas board of nursing as a licensed mental health technician.

(ee) "Licensed nurse" means an individual licensed by the Kansas board of nursing as a registered professional nurse or licensed practical nurse.

(ff) "Licensed practical nurse" means an individual who is licensed by the Kansas board of nursing as a licensed practical nurse.

(gg) "Licensed social worker" means an individual who is licensed by the Kansas behavioral sciences regulatory board as a social worker.

(hh) "Licensee" means an individual, firm, partnership, association, company, corporation, or joint stock association authorized by a license obtained from the secretary of aging to operate an adult care home.

(ii) "Medication" means any "drug" as defined by K.S.A. 65-1626, and amendments thereto.

(jj) "Medication aide" means an individual who has completed a training program in medication administration as specified in K.A.R. 28-39-169 through K.A.R. 28-39-171.

(kk) "Non-ambulatory resident" means any resident who is not physically or mentally capable of getting in and out of bed and walking a normal path to safety without the assistance of another person.

(ll) "Nurse aide" means an individual who has a nurse aide certificate issued by the Kansas department of health and environment according to K.A.R. 28-39-165.

(mm) "Nurse aide trainee" means an individual who is in the process of completing a nurse aide training program as specified in K.A.R. 28-39-165

or K.A.R. 28-39-167 and has not been issued a nurse aide certificate by the Kansas department of health and environment.

(nn) "Nursing facility" has the meaning specified in K.S.A. 39-923 (a) (2), and amendments thereto.

(oo) "Nursing facility for mental health" has the meaning specified in K.S.A. 39-923 (a) (3), and amendments thereto.

(pp) "Nursing personnel" means all of the following:

(1) Registered professional nurses;

(2) licensed practical nurses;

(3) licensed mental health technicians in nursing facilities for mental health;

(4) medication aides;

(5) nurse aides;

(6) nurse aide trainees; and

(7) paid nutrition assistants.

(qq) "Nursing unit" means a distinct area of a nursing facility serving not more than 60 residents and including the service areas and rooms described in K.A.R. 28-39-162.

(rr) "Occupational therapist" means an individual who is registered with the Kansas board of healing arts as an occupational therapist.

(ss) "Occupational therapy assistant" means an individual who is registered with the Kansas board of healing arts as an occupational therapy assistant.

(tt) "Paid nutrition assistant" has the meaning specified in K.S.A. 39-923, and amendments thereto. In addition, each paid nutrition assistant shall meet the following requirements:

(1) Have successfully completed a nutrition assistant course approved by the Kansas department of health and environment;

(2) provide assistance with eating to residents of an adult care home based on an assessment by the supervising licensed nurse, the resident's most recent minimum data set assessment or functional capacity screening, and the resident's current care plan or negotiated service agreement;

(3) provide assistance with eating to residents who do not have complicated feeding problems;

(4) be supervised by a licensed nurse on duty in the facility; and

(5) contact the supervising licensed nurse verbally or on the resident call system for help in case of an emergency.

(uu) "Physical restraint" means any method or any physical device, material, or equipment at-

tached or adjacent to the resident's body and meeting the following criteria:

(1) Cannot be easily removed by the resident; and

(2) restricts freedom of movement or normal access to the resident's body.

(vv) "Physical therapist" means an individual who is registered with the Kansas board of healing arts as a physical therapist.

(ww) "Physical therapy assistant" means an individual who is certified by the Kansas board of healing arts as a physical therapy assistant.

(xx) "Physician" means an individual who is licensed by or who otherwise meets the requirements of the Kansas board of healing arts to practice medicine or osteopathy.

(yy) "Psychopharmacologic drug" means any drug prescribed with the intent of controlling mood, mental status, or behavior.

(zz) "Registered professional nurse" means an individual who is licensed by the Kansas state board of nursing as a registered professional nurse.

(aaa) "Respite care" means the provision of services to a resident on an intermittent basis for periods of fewer than 30 days at any one time.

(bbb) "Sanitization" means effective bactericidal treatment by a process that reduces the bacterial count, including pathogens, to a safe level on utensils and equipment.

(ccc) "Self-administration of drugs" means the determination by the resident of when to take a drug and the application or ingestion of the drug by the resident without assistance from nursing staff.

(ddd) "Significant change in condition" means a decline or improvement in a resident's mental, psychosocial, or physical functioning that requires a change in the resident's comprehensive plan of care or negotiated service agreement.

(eee) "Social services designee" means an individual who meets at least one of the following qualifications:

(1) Is licensed by the Kansas behavioral sciences regulatory board as a social worker;

(2) has a bachelor's degree in a human service field, including sociology, special education, rehabilitation counseling, or psychology, and receives supervision from a licensed social worker; or

(3) has completed a course in social services coordination approved by the Kansas department of

health and environment and receives supervision from a licensed social worker on a regular basis.

(fff) "Speech language pathologist" means an individual who is licensed by the Kansas department of health and environment as a speech-language pathologist. (Authorized by K.S.A. 39-932; implementing K.S.A. 2004 Supp. 39-923, K.S.A. 2004 Supp. 39-925, and K.S.A. 39-932; effective Nov. 4, 2005.)

26-39-243. Resident functional capacity screening. (a) On or before each individual's admission to an assisted living or residential health care facility, a licensed nurse, a licensed social worker, or the administrator or operator shall conduct a screening to determine the individual's functional capacity and shall record all findings on a screening form specified by the department. A facility administrator or operator may integrate the department's screening form into a form developed by the facility, which shall include each element and definition specified by the department.

(b) Designated staff at each facility shall conduct a screening to determine each resident's functional capacity, according to the following requirements:

(1) At least once every 365 days;

(2) following a significant change in condition as defined in K.A.R. 26-39-144; and

(3) at least quarterly if the resident receives assistance with eating from a paid nutrition assistant.

(c) Designated staff at each facility shall ensure that the screening to determine each resident's functional capacity is accurately reflected on that resident's screening form.

(d) Designated staff at each facility shall use the results of the functional capacity screening as a basis for determining the services to be included in the negotiated service agreement. (Authorized by and implementing K.S.A. 2004 Supp. 39-923, K.S.A. 2004 Supp. 39-925, and K.S.A. 39-932; effective Nov. 4, 2005.)

26-39-278. Resident functional capacity screening. (a) On or before each individual's admission to an adult day care facility, a licensed nurse, a licensed social worker, or the administrator or operator shall conduct a screening to determine the individual's functional capacity and shall record all findings on a screening form specified by the department. A facility administrator or operator may integrate the department's screening form into a form developed by the fa-

cility, which shall include each element and definition specified by the department.

(b) Designated staff at each facility shall conduct a screening to determine each resident's functional capacity, according to the following requirements:

- (1) At least once every 365 days;
- (2) following a significant change in condition as defined in K.A.R. 26-39-144; and
- (3) at least quarterly if the resident receives assistance with eating from a paid nutrition assistant.

(c) Designated staff at each facility shall ensure that the screening to determine each resident's functional capacity is accurately reflected on that resident's screening form.

(d) Designated staff at each facility shall use the results of the functional capacity screening as a basis for determining the services to be included in the negotiated service agreement. (Authorized by and implementing K.S.A. 2004 Supp. 39-923, K.S.A. 2004 Supp. 39-925, and K.S.A. 39-932; effective Nov. 4, 2005.)

26-39-427. Resident functional capacity screening. (a) On or before each individual's admission to a home plus, a licensed nurse, a licensed social worker, or the administrator or operator shall conduct a screening to determine the individual's functional capacity and shall record all findings on a screening form specified by the department. A facility administrator or operator may integrate the department's screening form into a form developed by the facility, which shall include each element and definition specified by the department.

(b) Designated staff at each facility shall conduct a screening to determine each resident's functional capacity, according to the following requirements:

- (1) At least once every 365 days;
- (2) following a significant change in condition as defined in K.A.R. 26-39-144; and
- (3) at least quarterly if the resident receives assistance with eating from a paid nutrition assistant.

(c) Designated staff at each facility shall ensure that the screening to determine each resident's functional capacity is accurately reflected on that resident's screening form.

(d) Designated staff at each facility shall use the results of the functional capacity screening as a basis for determining the services to be included in the negotiated service agreement. (Authorized by and implementing K.S.A. 2004 Supp. 39-923,

K.S.A. 2004 Supp. 39-925, and K.S.A. 39-932; effective Nov. 4, 2005.)

26-39-438. Informal dispute resolution requests. Any adult care home administrator may request from the department an informal opportunity to dispute cited deficiencies pursuant to L. 2004, ch. 162, sec. 1 and amendments thereto. The adult care home administrator shall submit five copies of the request and the accompanying documentation required by L. 2004, ch. 162, sec. 1, and amendments thereto, to the department. (Authorized by and implementing L. 2004, ch. 162, sec. 1; effective Aug. 19, 2005.)

26-39-439. Informal dispute resolution panel. (a) An informal dispute resolution panel, which is also known as an independent review panel, shall be appointed by the secretary. The membership of each informal dispute resolution panel shall consist of the members authorized by L. 2004, ch. 162, sec. 1 and amendments thereto.

(b) If an adult care home administrator requests a face-to-face meeting, the meeting shall be conducted at the department's administrative offices in Topeka, Kansas.

(c) The panel shall allow a representative of the adult care home to provide information and documentation that refute the disputed deficiency or deficiencies.

(d) The panel shall allow a representative of the department to provide information and documentation that support the cited deficiencies.

(e) The panel shall consider the following information during the informal dispute resolution process:

- (1) The cited deficiency or deficiencies;
- (2) the applicable state or federal regulations;
- (3) the applicable state or federal interpretative guidelines;
- (4) any relevant information and documentation related to the statement of deficiencies provided by the adult care home representative; and
- (5) any relevant information and documentation related to the statement of deficiencies provided by the department's staff.

(f)(1) Each panel member shall adhere to departmental confidentiality requirements related to the information presented in the informal dispute resolution process, including the provisions of K.S.A. 39-934 and K.S.A. 39-1411, and amendments thereto.

(2) Each person who is not an employee of the department on aging shall sign a confidentiality

agreement before serving on an informal dispute resolution panel. The confidentiality agreement shall include a provision that the person has read the statutes specified in paragraph (f)(1) and will not disclose any confidential information outside the dispute resolution process.

(3) The adult care home representative shall be informed when a member of the panel is not an employee of the department on aging.

(g) Except as specified in paragraph (f)(1), all information that is precluded from disclosure by statute shall remain confidential. (Authorized by and implementing L. 2004, ch. 162, sec. 1; effective Aug. 19, 2005.)

26-39-440. Informal dispute resolution process. (a)(1) Departmental staff members may assist panel members in convening informal dispute resolution meetings within 30 days of the receipt of each request for informal dispute resolution. If the panel can not be convened within 30 days, the adult care home administrator shall be advised of the date of the panel meeting.

(2) More than one informal dispute resolution request may be reviewed during any panel meeting. The panel shall determine the order and method of the presentations by representatives of the adult care home and the department.

(b) Each representative presenting to the panel shall be limited to oral presentations only. Only panel members may ask questions of presenters.

(c) The panel may limit the time allowed for oral presentations.

(d) The panel shall consider all oral and written information presented and shall recommend one of the following to the secretary:

- (1) Upholding the deficiency;
- (2) deleting the deficiency; or
- (3) revising the scope and severity assessment.

(e) The panel shall provide the secretary with written recommendations, which shall be based upon the applicable statutes, regulations, and supporting documentation.

(f) The panel shall not consider any informal

dispute resolution request that meets any of the following conditions:

(1) Challenges any aspect of the survey process other than the disputed deficiency;

(2) challenges the scope and severity assessment of deficiencies, except when the scope and severity assessment indicates substandard quality of care or immediate jeopardy;

(3) alleges failure of the survey team to comply with requirements of the survey process;

(4) alleges inconsistency of the survey team in citing deficiencies among adult care homes;

(5) alleges inadequacy of the informal dispute resolution process; or

(6) disputes imposed remedies.

(g) The informal dispute resolution process shall not delay the formal imposition of state or federal enforcement remedies related to the survey in which deficiencies are being disputed. (Authorized by and implementing L. 2004, ch. 162, sec. 1; effective Aug. 19, 2005.)

26-39-441. Notification of final decision. (a) The informal dispute resolution panel shall submit a written recommendation to the secretary upon adjournment of the informal dispute resolution meeting. The panel's recommendation shall be accepted, rejected, or modified by the secretary.

(b) If the deficiencies are upheld, a departmental staff member shall notify the adult care home representative in writing that the informal dispute resolution request was unsuccessful and that the deficiencies will remain on the statement of deficiencies.

(c) If the deficiencies are deleted or the scope and severity assessments are revised, a department staff member shall notify the adult care home representative in writing that the informal dispute resolution was successful. A departmental staff member shall delete the deficiencies or adjust the scope and severity assessment, or both, and shall forward a revised statement of deficiencies to the adult care home administrator. (Authorized by and implementing L. 2004, ch. 162, sec. 1; effective Aug. 19, 2005.)